

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) THURSDAY, THE 6TH DAY
MR JUSTICE *Penny*) OF JUNE, 2019

B E T W E E N :

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

-and-

2203284 ONTARIO INC.

Respondent

**ORDER
(Tarion Cash Collateral Procedure Order)**

THIS MOTION, made by msi Spergel Inc., in its capacity as Court-appointed receiver and manager (in such capacity, the “Receiver”) of the assets, undertakings and properties of 2203284 Ontario Inc. (“220”, and such assets, undertakings and properties, the “Property”) for an order approving the Tarion Cash Collateral Procedure (as defined herein) was heard this day in Toronto, Ontario.

ON READING the notice of motion dated April 17, 2019, the motion records which include the Third Report of the Receiver, the Supplementary Third Report of the Receiver, the Second Report of the Receiver, the responding motion record, the factum of the Receiver and the responding factum of Tarion Warranty Corporation, filed, and on hearing the submissions of counsel for the Receiver, 220 as well as Luigi Santaguida and Marylou Santaguida, Tarion Warranty Corporation (“Tarion”), The Guarantee Company of North America (“The Guarantee Company”), and the counsel whose names appear on the counsel slip,

SERVICE

1. THIS COURT ORDERS that the time for service of the notice of motion and the motion records are hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

INTERPRETATION

2. THIS COURT ORDERS that, for the purposes of this Order, the following terms shall have the following meanings:

- (a) "Business Day" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (b) "Claimant" means a Person asserting a Taron Claim;
- (c) "Court" means the Ontario Superior Court of Justice (Commercial List);
- (d) "Encumbrances" has the meaning ascribed thereto in paragraph 6(b);
- (e) "ONHWPA" means the Ontario New Home Warranties Plan Act (Ontario), R.S.O. 1990, c. O.31, as amended, and the regulations promulgated thereunder;
- (f) "Order" means this Order;
- (g) "Outside Date" means March 1, ~~2022~~ ²⁰²² MFR;
- (h) "Person" means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;
- (i) "Project" means all phases and parts of the contemplated, but not completed, residential condominium development located at 98 James Street South, Hamilton, Ontario, and sometimes known as "The Connolly";
- (j) "Property" has the meaning ascribed thereto in the preamble to this Order;

- (k) “Receiver” has the meaning ascribed thereto in the preamble to this Order;
- (l) “Tarion” has the meaning ascribed thereto in the preamble to this Order;
- (m) “Tarion Bond” means bond no. TM5120099 issued by The Guarantee Company in favour of Tarion;
- (n) “Tarion Cash Collateral” has the meaning ascribed thereto in paragraph 4;
- (o) “Tarion Cash Collateral Balance” has the meaning ascribed thereto in paragraph 6(c);
- (p) “Tarion Cash Collateral Charge” has the meaning ascribed thereto in paragraph 12;
- (q) “Tarion Cash Collateral Claims” means amounts claimed in respect of accepted Tarion Claims, administration fees, legal fees, interest and other fees and costs paid or incurred by Tarion in connection with the administration of the Tarion Cash Collateral Procedure and any other amounts to which Tarion is entitled pursuant to the Tarion Bonds;
- (r) “Tarion Cash Collateral Procedure” means the procedures outlined in this Order, including, without limitation, in connection with the payment, holding, administration, and release of the Tarion Cash Collateral;
- (s) “Tarion Claim” means any right or claim of any Person against Tarion under the ONHWPA in respect of the Project;
- (t) “220” has the meaning ascribed thereto in the preamble to this Order;
- (u) “The Guarantee Company” has the meaning ascribed thereto in the preamble to this Order; and
- (v) “The Guarantee Distribution” has the meaning ascribed thereto in paragraph 7.

3. THIS COURT ORDERS that all references to the word “including” shall mean “including without limitation”, all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

TARION CASH COLLATERAL

4. THIS COURT ORDERS that the Receiver shall pay, within five (5) Business Days of the granting of this Order, the amount of \$200,000.00 to Taron (the "Taron Cash Collateral"), against which amount Taron may make, and process payments in respect of, Taron Cash Collateral Claims in accordance with this Order.

5. THIS COURT ORDERS that upon Taron's receipt of the Taron Cash Collateral pursuant to paragraph 4, Taron shall deliver to The Guarantee Company the Taron Bonds for immediate cancellation and neither Taron nor The Guarantee Company shall have any further obligations or liability whatsoever in respect of the Taron Bonds, the Property or the Project (in the case of Taron, subject only to any Taron Claims that are to be dealt with pursuant to paragraph

6.

TARION CLAIMS

6. THIS COURT ORDERS that:

(a) Taron shall:

(i) review any Taron Claim filed prior to the Outside Date and not already satisfied as of the date hereof, and accept, revise or reject them in accordance with Taron's ordinary claims review procedures provided, however, that Taron shall have the right, but not the obligation, to consult with the Receiver during its review of a Taron Claim;

(ii) advise the Receiver, if it has not been discharged, as well as ~~220~~ or its designate, of the particulars of the payment of any Taron Claim within ten (10) days after the payment of any such Taron Claim, and

(iii) provide a report to the Receiver, if it has not been discharged, as well as ~~220~~ or its designate, as to the Taron Claims received, Taron Claims and Taron Cash Collateral Claims paid and the amount of Taron Cash Collateral remaining as at the date of such report, with such reports due on December 6, 2019, June 6, 2020, December 6, 2020, June 6, 2021, ~~and~~

and in any event

WAF

as described in this subparagraph,

and February 5 -
20, 2022

Tarion shall return any such balance of the Tarion Cash Collateral to the party specified, and on the terms set out in

subparagraph (c).

December 6, 2021, ~~June 6, 2022, and December 6, 2022;~~

(b) Tarion shall be entitled to utilize the Tarion Cash Collateral and

process payments therefrom on account of accepted Tarion Claims and Tarion Cash Collateral Claims free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distraint, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "Encumbrances"), and without further authorization from any Person or this Court;

(c) the balance of the Tarion Cash Collateral (the "Tarion Cash Collateral Balance"), if any, shall be paid by Tarion to the Receiver, if it has not been discharged, or to 220 or its designate, or on further order the Court, within ten (10) Business Days following the later of:

(i) the Outside Date;

(ii) the completion of the review by Tarion of all Tarion Claims filed prior to the Outside Date;

(iii) in the event that Tarion revises or rejects any Tarion Claim, the resolution of such Tarion Claim in accordance with the procedures provided for in the ONHWPA; and

(iv) the processing and payment by Tarion of any Tarion Claims and Tarion Cash Collateral Claims from the Tarion Cash Collateral; and

(d) Tarion shall have no further obligations or liability whatsoever in respect of the Tarion Cash Collateral Balance following Tarion's payment of the Tarion Cash Collateral Balance to the Receiver, if it has not been discharged, or to 220 or its designate.

THE GUARANTEE COMPANY DISTRIBUTION

7. THIS COURT ORDERS that the Receiver is authorized and directed to make a distribution to The Guarantee Company of up to \$165,709.00 in full and final satisfaction of all

(e) in the event that a Tarion Claim is made prior to the Outside Date, but has not been finally determined in accordance with the procedures provided for in the ONHWPA, the amount of Tarion Cash Collateral to be retained past the Outside Date shall be equal to the amount of the claim that Tarion would have been entitled to claim under the Tarion Bond had it not been cancelled in respect of such Tarion Claim. Once such claim has been finally determined,

amounts owing by 220 to The Guarantee Company (such distribution, "The Guarantee Distribution").

8. THIS COURT ORDERS that upon payment of The Guarantee Distribution and the delivery of the Tarion Bond to The Guarantee Company for immediate cancellation, The Guarantee Company and its successors, assigns and agents shall not have any:

- (a) further right whatsoever to claim any further amount derived from or related to the Project; and
- (b) remaining interest whatsoever in the Property.

THE GUARANTEE COMPANY, TARION AND THE RECEIVER

9. THIS COURT ORDERS that none of The Guarantee Company, Tarion or the Receiver shall incur any liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of any gross negligence or wilful misconduct on their respective parts, and that no proceeding or process in any court or tribunal shall be commenced or continued against any of The Guarantee Company, Tarion or the Receiver in connection with the carrying out of the provisions of this Order except with the written consent of The Guarantee Company, Tarion or the Receiver, as applicable, or with leave of this Court on seven (7) Business Days' notice to The Guarantee Company, Tarion or the Receiver, as applicable. This Order is without prejudice to any other limitation of liability or protection afforded to The Guarantee Company, Tarion or the Receiver by order of the Court or otherwise.

10. THIS COURT ORDERS that, subject to paragraphs 12 - 14 of this Order, and in connection with the payment or receipt of any funds described herein, the Person receiving such funds shall do so free and clear of and from any and all Encumbrances.

11. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings; and
- (b) any assignment in bankruptcy made in respect of 220, the Property or the Project,

the Taron Cash Collateral Procedure and its implementation pursuant to this Order shall be binding on any trustee in bankruptcy, receiver, receiver and manager or interim receiver of 220, the Property or the Project and shall not be void or voidable by creditors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended, or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

TARION CASH COLLATERAL CHARGE

12. THIS COURT ORDERS that Taron shall be entitled to the benefit of, and is hereby granted, a fixed and specific charge and security interest (the "Taron Cash Collateral Charge") in the Taron Cash Collateral.

13. THIS COURT ORDERS that the Taron Cash Collateral Charge shall rank in priority to all Encumbrances against the Taron Cash Collateral from time to time.

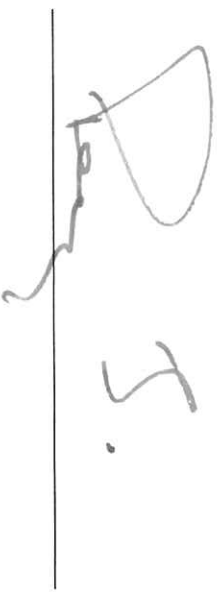
14. THIS COURT ORDERS that the filing, registration, recording or perfection of the Taron Cash Collateral Charge shall not be required and that the Taron Cash Collateral Charge shall be valid and enforceable for all purposes including, without limitation, as against any Encumbrances filed, registered, recorded or perfected subsequent to the Taron Cash Collateral Charge coming into existence notwithstanding any failure to file, register, record or perfect the Taron Cash Collateral Charge. The Taron Cash Collateral Charge may be enforced by Taron upon the terms and conditions as may be agreed to between the Receiver and Taron.

MISCELLANEOUS

15. THIS COURT ORDERS that each of Taron and the Receiver may from time to time apply to this Court for advice and directions in respect of the terms of this Order and in carrying out the terms of this Order.

16. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States to

give effect to this Order and to assist Tarion, the Receiver and their respective agents, in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Tarion, the Receiver and their respective agents, as may be necessary or desirable to give effect to this Order or to assist Tarion, the Receiver and their respective agents, in carrying out the terms of this Order.

A handwritten signature, appearing to be "D. S.", is written over a horizontal line. The signature is in dark ink and is somewhat stylized, with a large loop for the "D" and a simple "S".

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Applicant

and

2203284 ONTARIO LTD.

Respondent

Court File No.: CV-17-11827-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at
TORONTO

ORDER

(Tarion Cash Collateral Procedure Order)

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